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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ADVISORY ACTION

1. The affidavit filed on 09/18/2009 under 37 CFR 1.131 has been considered but is ineffective to overcome Hamzy et al. (Patent No US 7,490,340 – Hereinafter referred as Hamzy).

Hamzy has a filing date of 04/21/2003, the draft application of exhibit B has successfully shown conception and the instant application was constructively reduced to practice on 09/15/2003. The critical period for establishing diligence is just prior to 04/21/2003 (reduction to practice of Hamzy) to 09/15/2003 (reduction to practice of instant application). During this critical period, the inventor and attorney must be accountable.

Inventor Diligence

The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Hamzy reference to either a constructive reduction to practice or an actual reduction to practice. The applicant did not provide enough evidence of diligence as required by 715.07(a).

On page 2, label 6, of the inventor's declaration, the inventor's declaration states that during the time period of April though June 2003 the "[Inventor] was very busy working on the user interface for a new product release of MDEA television and released three (3) versions of the user interface specification". The provided declaration

and evidence fail to convey how the work of a new product release is directly related to the reduction to practice of the invention in issue. Moreover, the inventor has failed to show diligence during the critical period, which starts just before the filing day of the Hamzy reference (04/21/2003), as the draft was not completely revised and returned by the inventor until 08/01/2003, when the inventor e-mailed attorney with the revised marked up comments (As evidenced by exhibit C and exhibit G). In other words, the inventor appears to be working on a project not directly related to the instant application during the critical period. Additionally, there is lack of inventor diligence on the at least following dates: 9/05/2003-9/09/2003 and 9/09/2003-09/15/2003.

The work relied upon to show reasonable diligence must be directly related to the reduction to practice of the invention in issue [Naber v. Cricchi, 567 F.2d 382, 384,196 USPQ 294, 296 (CCPA 1977), cert. denied, 439 U.S. 826 (1978). >See also Scott v. Koyama, 281 F.3d 1243, 1248-49, 61 USPQ2d 1856, 1859 (Fed. Cir. 2002)].

"The work relied upon must be directed to attaining a reduction to practice of the subject matter of the counts. It is not sufficient that the activity relied on concerns related subject matter." Gunn v. Bosch, 181 USPQ 758, 761 (Bd. Pat. Inter. 1973) (An actual reduction to practice of the invention at issue which occurred when the inventor was working on a different invention "was fortuitous, and not the result of a continuous intent or effort to reduce to practice the invention here in issue. Such fortuitousness is inconsistent with the exercise of diligence toward reduction to practice of that invention." 181 USPQ at 761.

Furthermore, the inventor's declaration states in page 2 label 8 that "During the period of June 28, 2003 through July 13, 2003, [inventor] was away from work on vacation". The period during which diligence is required must be accounted for by either affirmative acts or acceptable excuses.The inventor's absence from work between June and July of 2003 appears to show lack of diligince during the critical period starting before 04/21/2003 to 09/15/2003.

Griffith v. Kanamaru, 816 F.2d 624, 2 USPQ2d 1361 (Fed. Cir. 1987) (Court generally reviewed cases on excuses for inactivity including vacation extended by ill health and daily job demands, and held lack of university funding and personnel are not acceptable excuses).

Attorney Diligence

The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Hamzy reference to either a constructive reduction to practice or an actual reduction to practice. The applicant did not provide enough evidence of diligence as required by 715.07(a).

Diligence of attorney in preparing and filing a patent application is required. Neither a statement nor evidence to show reasonable diligence has been submitted by the attorney. None of the exhibits provided demonstrate the attorney's diligence in question, as they appear to be directed to inventor diligence. For example, there is lack of attorney diligence on the at least following dates: 8/28/2003-9/05/2003, 9/05/2003-9/09/2003 and 9/09/2003-09/15/2003.

The examiner notes that six days to execute and file an application is acceptable [Haskell v. Coleburne, 671 F.2d 1362, 213 USPQ 192, 195 (CCPA 1982). See also Bey v. Kollonitsch, 866 F.2d 1024, 231 USPQ 967 (Fed. Cir. 1986)]. Reasonable diligence is all that is required of the attorney. Reasonable diligence is established if attorney worked reasonably hard on the application during the continuous critical period. If the attorney has a reasonable backlog of unrelated cases which he takes up in chronological order and carries out expeditiously, that is sufficient. Work on a related case(s) that contributed substantially to the ultimate preparation of an application can be credited as diligence.

2. Applicant's arguments filed 09/18/2009 with regard to the prior art submitted have been fully considered but they are not persuasive.

Regarding **claims 1 and 23**, applicant argues that Thomas, Johnson and Hamzy do not teach “different content based specifications corresponding to each of the two or more time range specifications” and that Hamzy teaches away from claimed feature.

However, the examiner respectfully disagrees with the applicant. The examiner points to the Johnson reference, which discloses a user profile which includes profile parameters such as rating limits and time ranges which allows parental control for the content consumed by a specific profile user, figure 6. The examiner recognizes that the

existence of the rating limits and time ranges are independent of each other. However, Hamzy clearly recites the existing correlation between time ranges and rating limits as disclosed on col. 4 lines 52-67 and figure 2. Hamzy further discloses a time censorship 210 method which allows the viewer to independently set rating restrictions 220 and 230 for each individual first and second time ranges 215 and 225, respectively; col. 4 lines 52-67 and figure 2. The Hamzy reference is implemented to simply show the well known feature of assigning content based restriction to one or more individual time ranges, since it would have been obvious to one of ordinary skill in the art to modify Johnson by allowing viewers to independently set rating restrictions for each individual time ranges, as taught by Hamzy, in order to accommodate viewing setting parameters to their children's schedule (Hamzy: Col. 4 lines 52-56). Therefore, the Hamzy reference does not teach away from the Thomas and Johnson references, and it clearly discloses "different content based specifications corresponding to each of the two or more time range specifications".

/Andrew Y Koenig/
Supervisory Patent Examiner, Art Unit 2423